

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREAS PEFANIS on behalf of
themselves and others similarly situated,

Plaintiff,

INDEX NO: 08 CIV. 002(DC)

v.

WESTWAY DINER, INC.

Defendants.

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DECLARATION OF DENISE A. SCHULMAN

I, Denise A. Schulman, under penalty of perjury, affirm as follows:

1. I am an associate with Joseph, Herzenfeld, Hester & Kirschenbaum LLP, class counsel in the above-referenced matter.
2. My firm learned of the Supreme Court's decision in *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, No. 08-1008, 2010 U.S. LEXIS 2929 (U.S. Mar. 31, 2010), in early April, 2010.
3. On April 29, 2010 I advised Defendant's counsel by e-mail that we would seek to file a Second Amended Complaint in light of *Shady Grove* and asked if Defendant would consent to an amendment.
4. Defendant's counsel replied to me on May 2, 2010 but did not state whether or not Defendant would consent to an amendment.

5. I replied to Defendant's counsel on May 3, 2010 but did not receive any further communications from him regarding the proposed amendment.
6. Defendant filed its motion for decertification and partial summary judgment on April 30, 2010. Plaintiff's opposition to Defendant's motion was due May 21, 2010, and Defendant's reply was due May 28, 2010.
7. Attached hereto as Exhibit 1 is a redlined copy of Plaintiff's proposed Second Amended Complaint.
8. Attached hereto as Exhibit 2 is a non-redlined copy of Plaintiff's proposed Second Amended Complaint.

Dated: June 4, 2010
New York, New York

/s/ Denise A. Schulman
Denise A. Schulman